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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. 07-

IN THE

Supreme Court of the United States

PATRICIA CREPEAU,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

PATRICIA CREPEAU
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QUESTIONS PRESENTED

This case involves questions of constitutionality:

1. Whether the United States Department of Defense (DOD) acted improperly in apprehending me below ground, at the entrance to the Pentagon Metro, rather than above ground, at the entrance to the Pentagon Metro.

2. Whether the United States Department of Defense acted improperly in not allowing photographs, facing away from the Pentagon, of the demonstration against U.S. military policy with regard to Abu Ghraib.

3. Whether the United States Department of Defense is acting improperly in continuing to keep my camera, instead of returning it to me. For purposes of national security, I requested this, while the court case remains pending, but, if no national security purpose is served, then I think it should be returned to me.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Patricia Crepeau respectfully petitions this Court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fourth Circuit in this case.

OPINIONS AND ORDERS BELOW

The court of appeal's 1-23-08 opinion (2007-4817; case no. 1:07-cr-00242-LMB) (entered as a mandate on 2-14-08) upheld the U.S. District Court, Eastern District of Virginia decision dated 8-7-07 affirming the magistrate judge's dismissal of her pending criminal charge with prejudice.

JURISDICTION

The court of appeal entered its judgment on 1-23-08 (mandate entered, 2-14-08). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause provides: "No State shall ... deprive any person of life, liberty or property without due process of law." U.S. CONST., amend. XIV, § 1.

Additionally, the Bill of Rights, Amendment I, provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances." U.S. CONST., amend. I.

STATUTES INVOLVED

32 U.S.C. § 234.15 Use of visual recording devices. The use of cameras or other visual recording devices in restricted areas or in internal offices must be approved by the Department of Defense component occupying the space. Photographs for advertising or commercial purposes may only be taken with the permission of the Office of the Assistant to the Secretary of Defense for Public Affairs.

§ CFR, Title 50, Appendix – War and National Defense, Photographing, Mapping or Other Representation of Military or Defense Properties [ACT JUNE 25, 1942, CH. 447, 56 STAT, 390].

§ 781 to 785. Omitted Codification. Sections 781 to 785 of this Appendix were omitted as terminated six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950, which emergency terminated two years from Sept. 14, 1976, pursuant to section 1601 of Title 50, War and National Defense.

Section 781, act June 25, 1942, ch. 447, § 1, 56 Stat. 390, provided that photographing, sketching, mapping, etc., of military or naval reservations, properties, equipment, etc., is unlawful.

Section 782, act June 25, 1942, ch. 447, § 2, 56 Stat. 391, provided authority to grant permission to photograph, sketch, map, etc., if national defense interests were not adversely affected.

Section 783, act June 25, 1942, ch. 447, § 3, 56 Stat. 391, provided penalties for violations of sections 781 to 785 of this Appendix.

Section 784, act June 25, 1942, ch. 447, § 4, 56 Stat. 391; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7817, 60 Stat. 1352, provided that sections 781 to 785 of this Appendix apply in all places within territory or jurisdiction of United States.

Section 785, acts June 25, 1942, ch. 447, § 5, 56 Stat. 391; June 4, 1953, ch. 97, 67 Stat. 41, provided that sections 781 to 785 of this Appendix be effective only until six months after termination of national emergency proclaimed by President on Dec. 16, 1950.

STATEMENT OF THE CASE

The U.S. Constitution, Amendment I, states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Therefore, U.S. citizens should be able to peaceably assemble, at federal agencies, to petition the government for changes in policies that may not serve the public interest or be in the interest of national security.

Additionally, there is the question of jurisdiction. The protest in question, and my photographing of it, took place above ground, at the entrance to the Pentagon Metro, but I wasn't apprehended there. I was

apprehended below ground, at the entrance to the Pentagon Metro, not by Metro police, but by Pentagon police.

32 U.S.C. § 234.15 states:

> "The use of cameras or other visual recording devices in restricted areas or in internal offices must be approved by the Department of Defense component occupying the space. Photographs for advertising or commercial purposes may only be taken with the permission of the Office of the Assistant to the Secretary of Defense for Public Affairs."

My photographs weren't for "advertising or commercial purposes", but were just for my scrapbook, because I was so glad to see someone other than myself who cared about Abu Ghraib, and what's being done to people there. Although signs were posted, I would never have noticed them, because this is part of my regular commute. Additionally, the signs are only "defense de" signs, with a red "prohibition" line drawn through a picture of a camera, and don't give the contact information for the Office of Public Communication, a part of the Office of the Assistant Secretary of Defense for Public Affairs, which it's my understanding is the right office to contact, to request permission for photographing, per 32 U.S.C. § 234.15.

I asked one of the protesters if it was okay for me to photograph him, and he said, "sure". Then, a few moments later, as I moved around the demonstration, I asked some of the others if it was okay to photograph

them, and they told me that they had been told by the military authorities to tell people not to. But, I was taking my photographs facing away from the Pentagon, so I thought it would be okay.

People who come to Washington, D.C., from all over our country, to protest the inhumane and unsafe policies of the U.S. military at least deserve to be able to take a few pictures of themselves, to take home with them. So I think provision should be made for photographs, facing away from the Pentagon.

Also, my camera hasn't yet been returned to me.

REASONS FOR GRANTING THE PETITION

The U.S. Court of Appeals for the Fourth Circuit, offered only an unpublished opinion, which isn't binding precedent in this circuit. The per curiam discussion found no reversible error, and dispensed with oral argument.

Also, the U.S. District Court, Eastern District of Virginia, on page 5 of the Order affirming the initial decision, on lines 14 and 15, stated that "the defendant has made no allegation of bad faith with regard to the dismissal of the charge". But, on page 3 of the Appellant's Reply Brief, in the 5th paragraph, I did make the allegation of bad faith.

Additionally, and lastly, with full respect for the U.S. Court system, so far none of these courts have addressed the constitutionality of 32 U.S.C. § 234.15.

CONCLUSION

The Court should grant certiorari and either remand this case back to the U.S. Court of Appeals for the Fourth Circuit, or consider it, itself, with regard to the constitutionality of 32 U.S.C. § 234.15.

Respectfully submitted,

PATRICIA CREPEAU
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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DECIDED JANUARY 23, 2008

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 07-4817

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

PATRICIA CREPEAU,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria.
Leonie M. Brinkema, District Judge.

(1:07-cr-00242-LMB)

Submitted: January 17, 2008
Decided: January 23, 2008

Before TRAXLER, SHEDD, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Appendix A

PER CURIAM:

Patricia Crepeau appeals the district court's order affirming the magistrate judge's dismissal of her pending criminal charge with prejudice. We have reviewed the record and find no reversible error. Accordingly, we affirm on the reasoning of the district court. *See United States v. Crepeau*, No. 1:07-cr-00242-LMB (E.D. Va. Aug. 7, 2007). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION DATED AUGUST 7, 2007

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA ALEXANDRIA DIVISION

No. 1:07CR242

Aug. 7, 2007

UNITED STATES OF AMERICA,

Appellee,

v.

PATRICIA CREPEAU,

Defendant/Appellant.

MEMORANDUM OPINION

LEONIE M. BRINKEMA, United States District Judge.

The defendant/appellant, Patricia Crepeau, has appealed a magistrate judge's order granting the United States' Motion to Dismiss with Prejudice the sole charge against Crepeau of taking photographs on the Pentagon

Reservation without approval, in violation of 32 C.F.R. § 234.15. For the reasons set forth below, the magistrate judge's decision will be affirmed.[1]

Background

On April 6, 2007, Patricia Crepeau was observed by Pentagon Police officers taking photographs of a peaceful demonstration on the Pentagon Reservation without approval in violation of 32 C.F.R. § 234.15.[2] When a Pentagon officer approached Crepeau, she confirmed that she was in possession of a camera and that she had been warned by the demonstrators that she could not take photographs on the Pentagon Reservation. The officer was unable to access the photos on Crepeau's camera, so he confiscated it in order to ensure that no classified photos had been taken.[3] Crepeau was then

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1. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before us and argument would not aid the decisional process.

2. Section 234.14(a) states, "The use of cameras or other visual recording devices on the Pentagon Reservation is prohibited, unless the use of such items are [sic] approved by the Pentagon Force Protection Agency, the Installation Commander, or the Office of the Assistant to the Secretary of Defense for Public Affairs."

3. Although Crepeau has apparently been unable to secure the return of her camera, she does not allege that the Pentagon officer is unwilling to return it. With the issuance of this Memorandum Opinion, this criminal case is resolved and Crepeau's camera should be returned to her forthwith.

issued a Violation Notice with an optional court date of May 18, 2007.

Crepeau appeared at the court on May 18, 2007 and met with counsel for the government, who advised her that the government had reviewed her case and had decided to dismiss the case based on the nature of the offense and her lack of criminal history. When Crepeau's case was called, the government moved for the dismissal with prejudice of the pending charge. Crepeau objected to dismissal and requested an "acquittal" of the charge. The magistrate judge granted the government's motion, dismissed the charge with prejudice, and explained to Crepeau that it was within the United States' discretion to dismiss the charge.

Crepeau subsequently appealed the dismissal of the charge. In lieu of an appeal brief, Crepeau filed a letter in which she challenged the constitutionality of the governing regulation and asked the Court to reconsider "the unfortunate dismissal of this case" because "dismissal sends the wrong message." The government argues that Crepeau has no standing to appeal the dismissal of the charge because she has not been legally aggrieved, and that the dismissal of the charge lies squarely within the government's discretion.

Discussion

In reviewing the decision of a magistrate judge, a district court applies the same standard of review as would a court of appeals reviewing a decision of a district

court. Fed.R.Crim.P. 58(g)(2)(D). Accordingly, the magistrate judge's conclusions of law are reviewed *de novo* and her factual conclusions reviewed for clear error. *Ornelas v. United States*, 517 U.S. 690, 699 (1996); *United States v. McKinnon*, 92 F.3d 244, 246 (4th Cir.1996).

The government argues that Crepeau has no standing to challenge the magistrate judge's order granting the government's motion to dismiss with prejudice the charge against her. Indeed, a criminal defendant has no standing to appeal a final dismissal order unless she is legally aggrieved. When a charge is dismissed with prejudice, the would-be defendant is no longer aggrieved. *See United States v. Lanham*, 631 F.2d 356, 358 (4th Cir.1980) (*citing Parr v. United States*, 351 U.S. 513, 516 (1956)). It is long-established that an accused is not aggrieved by entry of "an order of the court releasing and discharging him from further prosecution." *Lewis v. United States*, 216 U.S. 611, 612 (1910); *see also Parr*, 351 U.S. at 516-17 ("Only one injured by the judgment sought to be reviewed can appeal, and . . . petitioner has not been injured by [the prosecution's] termination in his favor").

In this case, the government moved to dismiss with prejudice the single charge against the defendant. The magistrate judge's order granting dismissal released and discharged Crepeau from further prosecution. With the termination of the case in her favor, Crepeau is no longer legally aggrieved and therefore has no standing

to challenge the constitutionality of the statute or the magistrate judge's order dismissing the charge.[4]

Even if Crepeau had standing to challenge the dismissal of her case, her appeal would still fail because, as the government argues, it is within the explicit discretion of the United States to decide what cases it will pursue. "In our criminal justice system, the government retains 'broad discretion' as to whom to prosecute." *Wayte v. United States*, 470 U.S. 598, 607 (1958) (*citing United States v. Goodwin*, 457 U.S. 368, 380 n. 11 (1982)). " '[So] long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.' " *Wayte*, 470 U.S. at 607 (*quoting Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978)).

Federal Rule of Criminal Procedure 48(a) provides that "the government may, with leave of court, dismiss an indictment, information, or complaint." Although the rule also grants authority to the Court to deny such a motion for dismissal, that discretion "is not broad." *United States v. Goodson*, 204 F.3d 508, 512 (4th Cir.2000). In fact, "the court must grant the government's Rule 48(a) motion unless the court concludes that to grant it would be clearly contrary to manifest public interest, determined by whether the prosecutor's motion to dismiss was made in bad faith."

4. Crepeau's decision to come to court to challenge the violation was entirely voluntary.

Id. (emphasis in original); *see also United States v. Perate,* 719 F.2d 706, 710 (4th Cir.1983) (A Rule 48(a) motion must be granted "absent a finding of bad faith or disservice to the public interest.").

The government asserts that the decision to dismiss the charge against Crepeau was made following a review of the defendant's criminal history and the nature of the pending charge against her. The defendant has made no allegation of bad faith with regard to the dismissal of the charge and the magistrate judge made no findings of bad faith. Although the defendant argues that the public has an interest in having the regulation that prohibits the taking of photographs on Pentagon property evaluated, such an interest is not specific enough to undermine the magistrate judge's decision to grant the government's motion. The United States was clearly within its authority to move for the dismissal of the charge and the granting of the motion was within the magistrate judge's discretion.

Conclusion

For the above-stated reasons, the decision of the magistrate judge will be affirmed. An appropriate Order will issue with this Opinion.

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SUPREME COURT, U.S.

No. 07-1344

IN THE
Supreme Court of the United States

PATRICIA CREPEAU,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MOTION
(SUPPLEMENTAL BRIEF FOR PETITIONER)

PATRICIA CREPEAU
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UNITED STATES SUPREME COURT

Civil Action No. 1:07-cr-00242-LMB

07-4817

PATRICIA CREPEAU

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant

May 2, 2008

MOTION TO REQUEST THAT THE COURT CONSIDER THE U.S. DEPARTMENT OF DEFENSE REVISED POLICY (COMPLETE TURNABOUT), ATTACHED

The e-mail correspondence attached speaks for itself. Although still waiting for the details of the return of my camera, it's super to see that I will be able to take photographs at the Pentagon, and still be within the law.

Thanks very much for listening,
and for anything you can do,
it would be great to get a definitive answer
on this,
not that I challenge the U.S. Dept. of Defense
ruling,
thanks again,
more later,
Pat Crepeau, pro se litigant

P.S. The procedure of dismissal without prejudice, to avoid consideration of the constitutionality of action taken, has been used again, just recently, by the U.S. Dept. of Defense, in the case of Mohammed al-Qahtani. His case was dismissed without prejudice, even though, as the possible "20th hijacker", on Sept. 11th, maybe he should have been charged with a crime, and convicted.

APPENDIX — E-MAIL CORRESPONDENCES

Crepeau, Patricia A - ESA

From: System Administrator
To: dlink@ermsapps-web.afis.osd.mil
Sent: Sunday, May 04, 2008 5:04 PM
Subject: Undeliverable: RE: 32 U.S.C. 234.15 [Incident:080411-000111]

Your message did not reach some or all of the intended recipients.

Subject: RE: 32 U.S.C. 234.15 [Incident:080411-000111]

Sent: 05/01/2008 4:46 PM

The following recipient(s) could not be reached:

dlink@ermsapps-web.afis.osd.mil on 05/04/2008 5:04 PM

The e-mail system was unable to deliver the message, but did not report a specific reason. Check the address and try again. If it still fails, contact your system administrator.

<ironport1.dol.gov # 5.0.0 smtp; 5.4.7 – Delivery expired (message too old) 'timeout' (delivery attempts: 0)>

Appendix

Crepeau, Patricia A - ESA

From: Crepeau, Patricia A - ESA
Sent: Thursday, May 01, 2008 4:46 PM
To: 'ERMS'
Cc: Crepeau, Patricia A - ESQ
Subject: RE: 32 U.S.C. 234.15 [Incident:080411-000111]

This is super!

Would it be possible to get my camera back, then?

Thanks very much for anything you can do,
let me know if you might like to see a copy of my
petition for a writ of certiorari,
this is so super!
thanks again,
let me know,
more later,
Pat

Appendix

Crepeau, Patricia A - ESA

From:	ERMS [dlink@ermsapps-web.afis.osd.mil]
Sent:	Monday, April 14, 2008 11:13 AM
To:	crepeau.patricia@gmail.com; pcrepeau@quixnet.net; Crepeau, Patricia A - ESA
Subject:	32 U.S.C. 234.15 [Incident:080411-000111]

Recently you requested personal assistance from our on-line support center. Below is a summary of your request and our response.

Thank you for contacting the Department of Defense. You asked us to help you find the information that would answer your question or address your comment. Below is a summary of your request and our response. Please review it to see if it addresses your concerns.

We have closed this request, in our records, by providing you this response. If you believe that your request has not been satisfied, please use the attached link to return to our site so that we may help you further.

We are the Office of Public Communication, a part of the Office of the Assistant Secretary of Defense for Public Affairs.

Thank you for allowing us to be of service to you.

If your issue remains unresolved, please update this question at http://155.7.40.196/Scripts/rightnow_DefenseLink.cfg/php.exe/enduser/acct_login.php?p_userid=Crepeau.Patricia@gmail.com&p_next_page=myq_upd.php&p_iid=36738&p_created=1207936159

Appendix

Subject

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32 U.S.C. 234.15

Discussion Thread

Response (jclark) - 04/14/2008 11:12 AM
Dear Pat Crepeau:

Thank you for your question and for taking the time to contact the Department of Defense. As you've noted, internal photos of the Pentagon are prohibited. Photos outside and off Pentagon property are not prohibited as long as they don't show security procedures and are strictly for personal use. We don't know of a particular spot or location to get the best shot though.

The Office of Public Communication

* * * *

Appendix

Crepeau, Patricia A - ESA

From: ERMS [dlink@ermsapps-web.afis.osd.mil]
Sent: Friday, April 11, 2008 1:49 PM
To: crepeau.patricia@gmail.com; pcrepeau@quixnet.net; Crepeau, Patricia A - ESA
Subject: 32 U.S.C. 234.15 [Incident:080411-000111]

Thank you for contacting the Department of Defense. We have received your message. We read every message and will take the appropriate actions in response to your question or comment.

We are the Office of Public Communication, a part of the Office of the Assistant Secretary of Defense for Public Affairs

If your issue remains unresolved, please update this question at http://155.7.40.196/Scripts/rightnow_DefenseLink.cfg/php.exe/enduser/acct_login.php?p_userid=Crepeau.Patricia@gmail.com&p_next_page=myq_upd.php&p_iid=36738&p_created=1207936159

* * *

Appendix

Customer (Pat Crepeau) - 04/11/2008 01:49 PM
§ 234.15 Use of visual recording devices.
top
The use of cameras or other visual recording devices in restricted areas or in internal offices must be approved by the Department of Defense component occupying the space. Photographs for advertising or commercial purposes may only be taken with the permission of the Office of the Assistant to the Secretary of Defense for Public Affairs.

How can I take a photograph, away from the Pentagon, for personal use? I want to put it in my scrapbook.

Thanks very much for any help you can give,

Pat

* * * *